

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	Case No. 02-17075
)	
JOHN MAISON SCHOHL and)	Chapter 7
BRIDGET MARY SCHOHL,)	
Debtors.)	Adversary Proceeding No. 03-1396
)	
MARVIN A SICHERMAN,)	Judge Arthur I. Harris
CHAPTER 7 TRUSTEE,)	
Plaintiff,)	
)	
v.)	
)	
JOHN F. MACKIN and)	
MARY C. MACKIN,)	
Defendants.)	

ORDER REGARDING DEFENDANTS' JURY DEMAND

On September 30, 2003, the Chapter 7 trustee, Marvin A. Sicherman, filed the above-captioned adversary proceeding against defendants John F. Mackin and Mary C. Mackin. In the Complaint, the Chapter 7 trustee seeks to set aside an alleged fraudulent transfer or in the alternative to recover funds in an amount not less than \$29,800 from John and Mary Mackin, the parents of debtor Bridget Schohl (Docket #1). The Chapter 7 trustee alleges that shortly before filing for bankruptcy, the debtors transferred ownership of their home to John and Mary Mackin for less than a reasonably equivalent value. The Mackins deny the substance of the allegations and include a demand for a jury trial in their answer (Docket #8).

Pursuant to an amended scheduling order, the Court scheduled a trial to begin on September 8, 2004, and ordered each party that has made a jury demand either (1) to file a brief explaining how it is entitled to a jury trial in this proceeding, or (2) to file a notice withdrawing its jury demand (Docket #23). The Court also ordered each party to file a notice with the Court indicating whether it consents to having the Bankruptcy Judge conduct a jury trial pursuant to 28 U.S.C. § 157(e). *Id.* On July 23, 2004, John and Mary Mackin filed separate briefs indicating why each believed he or she was entitled to a jury trial (Docket ## 28 & 29). And while the Chapter 7 trustee indicated his consent to having the Bankruptcy Judge conduct the jury trial (Docket #26), the Mackins indicated that they would not consent (Docket #27).

In *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), the Supreme Court held that a person or entity, who has not filed a proof of claim, is entitled to a jury trial if otherwise entitled under the Seventh Amendment when sued by a trustee to recover a transfer. It therefore appears that the Mackins, who have not filed proofs of claim, fall within the narrow group of defendants entitled to a jury trial in a bankruptcy proceeding, even though this is a core proceeding under 28 U.S.C. § 157(b). Nevertheless, under 28 U.S.C. § 157(e), the Bankruptcy Judge may not

conduct the jury trial without “the express consent of all the parties.”¹

In their notice of non-consent to having the Bankruptcy Judge conduct the jury trial, the Mackins requested that this proceeding be transferred to the regular docket of the District Court (Docket #27). The Court believes that the proper procedure is for one or both of the defendants to move for a withdrawal of this adversary proceeding to the District Court pursuant to 28 U.S.C. § 157(d) and Bankruptcy Rule 5011. Such a motion would then be heard by the District Court. *See, e.g., In re Orion Pictures Corp.*, 4 F.3d 1095, 1101-02 (2d Cir. 1993) (discussing factors district court should consider in evaluating “cause” for withdrawal under subsection 157(d), including inability of bankruptcy court to conduct jury trial); *In re Formica Corp.*, 305 B.R. 147 (S.D.N.Y. 2004)(same).

Accordingly, the Court hereby orders that, **on or before August 16, 2004**, any defendant seeking a jury trial before the District Court shall file a motion to withdraw this adversary proceeding to the District Court. Should either defendant file such a motion, all matters before the Bankruptcy Court in this adversary

¹ 28 U.S.C. § 157(e), which was enacted as part of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, also requires that the Bankruptcy Judge be specially designated to exercise such jurisdiction by the District Court. Such designation was accomplished in the Northern District of Ohio in 1995 when the District Court adopted Local Rule 4:0.12 – “Designation of Bankruptcy Judges to Conduct Jury Trials.”

proceeding will be stayed until further order of the District Court. *See* Bankruptcy Rule 5011(c) (“bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending disposition of the motion”).

IT IS SO ORDERED.

/s/ Arthur I. Harris 08/05/2004
Arthur I. Harris
United States Bankruptcy Judge